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selecting color components from a first color model and from a second color model in the same issue, as does the present invention.

### Standard for Anticipation under 35 U.S.C. 102

The law is clear and well-settled that in order for a claim to be anticipated under the standard of 35 U.S.C. 102, the Patent Office bears the burden of establishing a prima facie case of anticipation. As stated by the Court of Appeals for the Federal Circuit in the case of *In re Oetiker*, 24 USPQ 2d 1443 (Fed. Cir. 1992), "[i]f the examination at the initial stage does not produce a prima facie case of unpatentability, *then without more the applicant is entitled to grant of the patent.*" (emphasis added). The Court of Appeals for the Federal Circuit also clearly stated that "[i]n deciding the issue of anticipation, the trier of fact must identify the elements of the claims, determine their meaning in light of the specification and prosecution history, and identify corresponding elements disclosed in the allegedly anticipating reference." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 193 (Fed. Cir. 1984).

Further, under 35 U.S.C. 102, anticipation requires that "the prior art reference must be enabling, thus placing the allegedly disclosed matter in the possession of the public." *Akzo N.V. v. U.S. Int'l Trade Comm'n*, 1 USPQ 2d 1241 (Fed. Cir. 1986). The Court of Appeals for the Federal Circuit also states this as "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps Clinic & Research Found. v. Genetech Inc.*, 18 USPQ 2d 1001 (Fed. Cir. 1991) This was also stated as "An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention." *ATD Corp. v. Lydall, Inc.*, 48 USPQ 2d (Fed. Cir. 1998). If an element is missing from the allegedly anticipating reference, it may only be assumed to be inherent in the reference if it must necessarily result from the prior art reference. "*The mere fact that a certain thing may result from a given set of circumstances is not sufficient.*" (emphasis added) *In re Oelrich*, 212 USPQ 323 (C.C.P.A. 1981).

Thus, in order for the Patent Office to establish a prima facie case of anticipation, the Examiner must provide each of the following:

1. a single reference;
2. that teaches or enables
3. *each of the claimed elements* (as arranged in the claims)
4. expressly or inherently (and *if inherently, it must necessarily result from the reference, not simply may result*)
5. as interpreted by one of ordinary skill in the art.

The anticipatory reference must describe the subject matter of the claims with sufficient clarity and detail to establish that the subject matter existed, and this existence was recognized by persons of ordinary skill in the field of the invention.

In the outstanding Office Action of September 10, 2001, Office Action disagreed that the Dermer reference fails to teach or enable the claimed elements of defining a new color for visual depiction by combining the components of two separate color models.

Even taking Figure 24 in the most favorable light of the Office Action, the Dermer reference fails to disclose defining a new color based on assigning percentages to each of the components of the two separate respective color models. Note that the spot colors depicted in Figure 24 are not separated into their respective components. If a percentage is able to be assigned to the spot color as well as the components of the process color, it is assigned to the entire spot color not the components of the spot color. In the system of Dermer, a spot color is a separate printing plate, not a combination of plates as used in process colors. This is traditionally how color documents are printed, by using four separate cmyk plates and special spot color plates to form a printed image. However, it has not been possible to accurately visually depict the combination of process colors and spot colors previously. Process colors are by definition subtractive colors in that the image begins white, then as process color components are added, the image darkens. Thus, process colors are preferred for printing purposes. Spot colors are by definition "additive". The image begins dark, such as on a computer monitor screen, and as color components are added, the image lightens. Thus spot colors are desired for radiant light sources. In previous systems, if a spot color has been added to a process color, the resulting displayed image is rendered brown. The printed image will be accurate, but the displayed image is not. The present invention is concerned with the depiction of the combined spot and process colors. Dermer on the other hand, is concerned with correcting the misregistration of the images during the printing process.

Dermer uses a ranking process that utilizes rules based upon color combinations, luminescence of individual colors in comparisons to others and other criteria to define a trap. It does not use an algorithm that defines an entirely new color for viewing on a computer monitor based on percentages of the components of one color model layered onto the percentages of the components on another color model. The color of Dermer is already defined, and then the system corrects the misregistration between the printing plates either automatically or manually. The only "new" colors defined in Dermer are the "trap zone" colors that are simply potential colors occurring from the misregistration of the printing plates. Rankings and weights are applied to these potential colors to derive the desired trap zone color in accordance with assigned calibration trap data supplied by the user, not by an algorithm.

Dermer does not disclose, suggest, or teach in any manner assigning percentages to each of the color components of different color models to define a new color, or defining a new color for visual depiction by layering components of a spot color in accordance with shade values onto the components of a process color.

#### **Claim Rejections under 35 U.S.C. 102**

Claims 1 - 18 were rejected under 35 U.S.C. 102(e) as being anticipated by Dermer.

The Office Action stated that "Claims 1 - 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dermer. Regarding claim 1, Dermer teaches A system for digitally defining a color from more than one color model, said system comprising:

means for selecting at least one color component from a first color model; (see lines 44-67, column 18; lines 1-45, column 19); means for selecting at least one additional color component from at least one other color model (see lines 44-67, column 18 and lines 1-45, column 19) and means for assigning percentages to each of said selected color components."

Claim 1, as originally filed set forth:

A system for digitally defining a color from more than one color model, said system comprising:

means for selecting *at least one color component from a first color model;*

means for selecting at least one additional color component from at least one other color model; and

means for assigning percentages to each of said selected color components. (emphasis added).

The invention as claimed in claim 1 includes means for selecting one or more color components from a first color model, such as CMYK process color, and means for selecting one or more additional color components from another color model, such as RGB spot colors and assigning percentages to each of the selected components to digitally define a color from more than one color model.

Dermer discloses a system for correcting plate misregistration in the actual printing process. This system is intended to correct for shifts between graphic images on a document, commonly referred to as "trapping" or "choking". The system described in lines 44 – 67, column 18 and lines 1 – 45, column 19 is limited entirely to using a single color model, CMYK process colors. The system allows percentages to be assigned to the components of two process colors. Dermer not only does not disclose assigning percentages to spot color components, Dermer treats spot colors as solid colors not having components. (see the examples in columns 10 – 18, and Figure 24) Dermer traps spot color images by using "fills". *Dermer fails to disclose any means for selecting components from a first color model for use with components of a second distinct color model or for assigning percentages to the color models to create new colors for visual depiction.*

The Office Action also stated that in regard to claim 2, Dermer teaches "Means for defining the process color and the at least one other color applied to into process color components, spot color components and percentage values." Dermer does define process colors into their components and spot color into components, but not in the same operation. Dermer breaks the colors down into either process colors or into spot colors, not both combined together. Additionally, Dermer does not break the spot colors down into components, nor does Dermer assign percentage values to the spot color components.

The Office Action also stated that Dermer teaches "means for determining a value for said percentages of said spot color components layered onto said coordinate set of values converted from said process color components (see lines 44-67, column 18); and means for converting said value into said coordinate set. (See lines 1 – 59, column 8.) Dermer does not disclose or teach these claimed limitations. In lines 44 – 67, column 18, Dermer discloses assigning percentages to the components of process colors only, not to spot color components and certainly not means for determining a value of said percentages of said spot color components layered onto said coordinate set of values converted from the process color

components. This is truly a unique feature of the claimed invention. Also, in lines 1 – 59, column 8, there is no mention of converting a value determined as set forth in claim 2 into the coordinate set.

Claim 3 includes the limitations of claims 1 and 2 and thus is allowable for the reasons stated above.

Regarding claim 4, Dermer does not disclose means for determining the value by an iterative process for each of the spot colors sequentially layered on the previously determined value until the value is finally determined. Dermer discloses a process for filling the “trapped” space with a color fill “iteratively” by a user interface until the user is satisfied.

Claim 5 includes the limitations of claims 1 and 2 and thus is allowable for the reasons stated above.

Regarding claim 6, Dermer does not disclose layering each of the percentage values for each of the coordinate set components derived from the spot colors onto the each of the components of the coordinate set values converted from the process colors. Dermer only discloses assigning percentages to components of process colors, not to the components of spot colors or to the combination.

Regarding claim 7, Dermer shows a Manual Trapping Options Selection screen in Figure 24. The screen displays a misregistration display option 2442 and a “Plates Shifted” selection 2444 for selecting printing plates and the misregistration between the printing plates. Dermer does not define a new color based on the based on the shade values applied for each of the process color and for each of the spot colors or for depicting this new color on a monitor screen.

Regarding claim 8, Dermer again does not disclose or teach applying shade values to each of the process color components and spot color components to define a new color.

Regarding claim 9, Dermer does not disclose the limitations of claim 7 discussed above, or the limitations of defining shade values for each of the spot color components applied to the process color components.

Regarding claim 10, Dermer does not disclose the limitations of claim 7 discussed above, or the limitations of defining shade values for each of the spot color components applied to the process color components.

Regarding claim 11, Dermer does not disclose defining new colors, and particularly not defining a new color by layering each of components of the spot colors onto the components of

the process colors sequentially in an iterative process. The mere mention of an iterative process by Dermer does not teach the particular iterative process of the claimed invention.

Regarding claim 12, as stated above, Dermer does not teach defining a new color by layering spot colors onto process colors, nor does Dermer disclose converting such a new color into a spot color model for displaying onto a computer screen. Dermer is concerned with process colors and/or spot colors for printing purposes.

Regarding claim 13, Dermer only illustrates a screen that allows certain printing plates to be selected to show the effect of misregistration of these plates. It does not define a new color based on the combination of the assigned shade values for each of the components of the process colors and for each of the components of the spot colors.

Regarding claims 14 and 15, Dermer in lines 1 – 45, column 19, only discloses CMYK process colors, not RGB spot colors. There is no conversion of CMYK colors into RGB values.

Regarding claim 16, Dermer does not disclose defining a color based on the combination of assigned shade values for the components of the spot colors and process colors and layering the spot colors on the process colors.

Regarding claims 17 and 18, the limitations of claim 13 are included and as discussed above, not disclosed by Dermer.

Dermer does not disclose, suggest, or teach in any manner assigning percentages to each of the color components of different color models to define a new color, or defining a new color for visual depiction by layering components of a spot color in accordance with shade values onto the components of a process color.

The Applicants respectfully submit that the inventions as set forth in claims 1 – 18 are not anticipated by Dermer or any of the other prior art citations. The Applicants respectfully request that the claims be indicated as allowable over the prior art. The Examiner is respectfully requested to telephone the undersigned if further discussion would advance the prosecution of this application.

Respectfully submitted,

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By: Glenn L. Webb  
Glenn L. Webb, Reg. No. 32,668  
P.O. Box 951  
Conifer, CO 80433

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WEBB LEWIS

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(303) 838-8610

(303) 838-0679 facsimile